

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**



**REPRESENTING YOURSELF
IN ALASKA'S FEDERAL COURT**

(The *Pro Se* Handbook)

Office of the Clerk of Court

December, 2013

PREFACE

It is with great pleasure that the United States District Court for the District of Alaska presents this handbook to the public it serves. The handbook is the result of many hours of work by dedicated professionals to make the administration of justice in the federal courts intelligible to that public. Special thanks is owed to Ms. Diane Smith, this Court's *Pro Se* Staff Attorney, who primarily drafted the handbook and compiled the materials included within it and to the members of the Court's *Pro Se* Litigation Committee chaired by the Honorable John D. Roberts, Magistrate Judge. The Committee made the final revisions and prepared the handbook for publication. Committee Members: Magistrate Judge John D. Roberts, Chair; Magistrate Judge A. Harry Branson; Assistant Attorney General John Bodick; Kevin F. McCoy, Assistant Federal Public Defender; Mr. Seth Eames, Alaska *Pro Bono* Program Coordinator; Ms. Carolyn Bollman, Deputy in Charge, United States District Court Fairbanks, Alaska; Ms. Diane Smith, *Pro Se* Staff Attorney; and Mr. Bob Mobbs, Chief Deputy United States Marshal for the District of Alaska.

The handbook was first published in January 1998, and it was revised and updated in December 2002, as a collaborative effort by Ms. Diane Smith, *Pro Se* Attorney and Mr. Thomas J. Yerbich, Court Rules Attorney. Minor periodic updates have been made thereafter.

Ralph R. Beistline, Chief Judge
United States District Court
For the District of Alaska

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I. INTRODUCTION

This handbook has been prepared specifically for the person who has chosen, for whatever reason, to file a lawsuit in federal court without an attorney—called *pro se*,¹ a Latin phrase that means "for yourself." The purpose of this handbook is to provide you with a practical and informative initial guide to filing a lawsuit without a lawyer.

*This handbook is only a guide. It does **not**:*

- (1) answer all questions regarding federal civil practice and is not a substitute for statutes, rules and case law;
- (2) take the place of the Federal Rules of Civil Procedure or the rules of this court; or
- (3) relieve you from the responsibility of complying with any obligation imposed by law.

You are responsible for researching and complying with the law, regardless of what specific law is discussed in the handbook. In particular, if you wish to proceed in this court, you should review the Federal Rules of Civil Procedure and the Local Rules of the court. The Federal Rules of Civil and Criminal Procedure, the local rules of this court, federal statutes and case law can be found in Anchorage at the Alaska Court Law Library at Third Avenue and K Street, and the U.S. Courts Library at Seventh Avenue and C Street. You may find legal resources at these libraries and also at the Loussac Public Library and the University of Anchorage Alaska (UAA). To help you define legal terms, a dictionary, such as Black's

¹ Sometimes referred to as *pro per* or *in propria persona*.

Law Dictionary may be used. Legal dictionaries are also found at each of these libraries. In addition, some of these materials can be found throughout the state or online. Contact your public library. The attached bibliography of legal references may be useful, and tells where they can be found.

There are three active district court judges and two full-time magistrate judges in Anchorage. Part-time magistrate judges sit in Fairbanks, Juneau, Ketchikan, and Kodiak. The main office is in Anchorage, with offices in Fairbanks, Juneau, Ketchikan, and Nome.

The judges and court staff for the District of Alaska want a speedy, inexpensive, fair and just resolution of each case. This handbook has been prepared to help achieve this goal. However, it is important to understand that **employees of the Clerk's Office and judicial staff are prohibited from giving legal advice to any litigant.**

COURT STAFF CANNOT:

- ▶ Interpret rules, statutes or other law, or interpret any substantive matters contained in this handbook;
- ▶ Recommend a course of action;
- ▶ Predict a decision of a judge;
- ▶ Interpret the meaning or effect of any Court order or judgment; or
- ▶ Assist or do legal research for you.

II. GENERAL INFORMATION

Documents may be filed in this Court with the Clerk's Office in person or by mail. In Anchorage, the Clerk's Office

is generally open to the public from 9:00 a.m. - 12:30 p.m., and 1:30 p.m. - 4:30 p.m., Monday through Friday, except federal holidays. The telephone number is (907) 677-6100. When the Clerk's Office is closed, but the federal building is open to the public, a "drop box" directly outside the Clerk's Office is available for filing. Documents placed in the drop box after 4:30 p.m. will be stamped as filed on that same day. Documents placed in the box in the morning, before 9:00 a.m., will be stamped with the previous day's date.

Documents mailed to the Clerk's Office in Anchorage should be mailed to:

United States District Court
Clerk's Office
222 W. 7th Avenue, #4
Anchorage, Alaska 99513-7564

Documents mailed to other federal court locations should be sent to the appropriate Clerk's Office at the following addresses:

U.S. District Court
101 12th Ave., Room 332
Fairbanks, Alaska 99701-6283

U.S. District Court
P.O. Box 020349
Juneau, Alaska
99802- 0349

U.S. District Court
648 Mission Street, Room 507
Ketchikan, Alaska 99901-6534

U.S. District Court
P.O. Box 130
Nome, Alaska 99762-0130

Documents may be filed either in Anchorage or in the divisional office where the case is located. **NO FILINGS SHOULD**

BE DELIVERED DIRECTLY TO A JUDGE'S CHAMBERS OR MAILED DIRECTLY TO A JUDGE.

All documents must be filed on 8 ½ x 11 inch white paper in accordance with Local Rule 10.1. A copy of every document filed or sent to the Clerk's Office must also be served on the opposing party's attorney. *A copy of any document filed with the Clerk's Office should be kept for your records.*

Do not worry if your documents are not written in legal language. The court takes into consideration that you are acting without a lawyer and are untrained in drafting legal documents. You should, however, make every effort to state your case legibly, in clear, concise terms, and use the court's forms whenever available.

III. REPRESENTING YOURSELF WITHOUT A LAWYER

Most people who litigate in federal court hire an attorney familiar with the rules of practice and procedure that govern court processes. Appearing in a lawsuit without a lawyer is generally unwise and can be very risky. The rules of practice and procedure that govern the conduct of court proceedings are numerous and complex.

An individual has a right to pursue his or her own claims in court by appearing without a lawyer. A corporation, partnership, association, or entity, other than an individual, must be represented by an attorney. There are some basic rules that apply to the individual appearing without an attorney.

- ▶ While you may represent yourself, you may not represent another person.

- ▶ You must follow the same rules of practice and procedure as an attorney.
- ▶ You should pay special attention to Rule 11, Federal Rules of Civil Procedure, which requires you to make a reasonable inquiry into the facts and law before signing and filing documents in a court. Sanctions may be imposed on you if you file frivolous pleadings or engage in abusive practices.

A. Obtaining an Attorney

Unlike a criminal case, a person involved in a civil case is not entitled to a court-appointed attorney at taxpayer expense. There are organizations that help low income individuals obtain counsel in civil cases for a nominal fee or even on a volunteer basis without charge. The Alaska Bar Association Lawyer Referral Service lists attorneys willing to provide an initial consultation for a nominal fee. The Alaska Legal Services Corporation provides free legal services in some types of civil cases for qualifying low income individuals. Also, some cases may be taken by an attorney on a contingency fee basis, where the attorney collects a fee only from any money won in the lawsuit.

In Alaska, the telephone numbers to call are:

- ▶ Alaska Legal Services Corporation 272-9431 in Anchorage
(800) 478-9431 outside Anchorage
- ▶ Alaska Lawyer Referral Service 272-0352 in Anchorage
(800) 770-9999 outside Anchorage

B. Court-Appointed Counsel in Non-Habeas Civil Cases

You may ask that the Court request the services of a volunteer lawyer if you are unable to secure counsel on your own. However, there are many more people seeking volunteer

counsel than there are attorneys available to volunteer their services. You must file your request on the forms provided by the Court. The Court then considers several factors: (1) whether you are within the low-income guidelines for volunteer counsel; (2) whether you have made a reasonable attempt to find a lawyer without success; (3) whether your case has a reasonable possibility of success on the merits; and (4) whether your case is so factually and legally complex that you need a lawyer to articulate your claims.

C. Communicating with the Judge

It is improper for any attorney or party to communicate *ex parte* with the judge assigned to the case, or with the judge's staff. An *ex parte* communication is any contact (a) without the opposing party being present and/or (b) without the knowledge and consent of the opposing party. All communications to the court must be in writing and filed with the Clerk's Office. Copies must always be served on the opposing party's attorney (if there is one) or the opposing party, if not represented by counsel.

IV. COMMON TYPES OF PRO SE CASES

Instructions and forms for filing the following actions, in which individuals frequently represent themselves, are available for your use from the Clerk's Office:

- ▶ *Habeas corpus* petitions, filed by people in prison or jail, usually challenging their convictions or sentences under 28 U.S.C. §§ 2254 and 2255;
- ▶ Civil rights claims under the federal statute, 42 U.S.C. § 1983, with separate forms available for prisoners and non-prisoners;

- ▶ Cases alleging harm from employment discrimination, brought under 42 U.S.C. § 2000(e); and
- ▶ Social security complaints, seeking judicial review of final administrative action by the Commissioner of Social Security.

In some of these cases, it is necessary to exhaust all other available remedies before you can pursue a claim in federal court. This means that you must take all steps available to you in either the administrative agency, institution, or in the state court system to address your grievance or complaint. Three areas where this is likely to arise are: (1) if you are a state prisoner seeking a writ of *habeas corpus* under 28 U.S.C. § 2254; (2) if you are a prisoner bringing a civil rights action under 42 U.S.C. § 1983; or (3) if you are appealing a decision of a federal agency, such as the Social Security Administration.

A. Petition for Writ of Habeas Corpus

1. Petitioners Convicted in State Court (28 U.S.C. § 2254)

If you are in jail or otherwise "in custody" as a result of an Alaska state court conviction, you may ask the federal district court to set aside your state court conviction if it violated the Constitution or laws of the United States. You may challenge the fact or duration of the confinement. This challenge is brought as a petition for writ of *habeas corpus* against the person or custodian who holds you in custody, usually the warden at your institution, or the Commissioner of the Alaska Department of Corrections. Before you file a

petition for writ of *habeas corpus*, remember four important principles:

(1) A federal court will only consider claims of federal errors in the state court proceeding; state law mistakes are not reviewed in federal court.

(2) A federal court will not correct an error unless you prove that you have exhausted state court remedies as to each ground alleged. Here, exhausting state court remedies means that you must first ask for relief from the Alaska Trial Court, the Alaska Court of Appeals, and the Alaska Supreme Court to correct the claimed federal error. The federal court will consider the petition only if all three levels of state court – Alaska Trial Court, Alaska Court of Appeals, and Alaska Supreme Court – were properly asked to review the issue(s) and then refused to correct the federal error.

(3) The petition must generally be filed within one (1) year after the Alaska Supreme Court refused to correct the claimed error.

(4) All claims should be stated in the first petition filed in federal court; a second or subsequent petition can only be filed with permission from the United States Court of Appeals for the Ninth Circuit.

(5) Finally, you should use the form provided by the Court, which can be obtained at the Clerk's Office.

2. Petitioners Convicted in Federal Court (28 U.S.C. § 2255)

If you are in jail or are otherwise "in custody" as a result of a federal conviction you may ask the federal district court to set aside the conviction or correct the sentence received. You must show: (a) that the "sentence was

imposed in violation of the Constitution or laws of the United States"; (b) that the Court was without jurisdiction to impose the sentence; (c) that the sentence was more than the maximum authorized by law; or (d) that some other defect in the proceedings makes the conviction open to challenge.

Before you file a motion under § 2255, remember two things:

(1) The motion must be filed, except under certain limited circumstances, within one year of the date that the federal conviction became final.

(2) All claims should be stated in the first petition; a second or subsequent § 2255 motion can only be filed with permission from the United States Court of Appeals for the Ninth Circuit.

(3) Finally, you should use the form provided by the Court, which can be obtained from the Clerk's Office.

B. Civil Rights Actions (42 U.S.C. § 1983)

Under the federal Civil Rights Act, a person who acts under color of state law (such as a state official or employee) to violate another's constitutional rights may be liable for damages. If you claim violations of your constitutional rights while in confinement, you must first seek relief through any prison grievance procedures available. A copy of the Department of Corrections' final decision on your grievance may be attached to the civil rights complaint. Forms for filing civil rights actions, with instructions, are available from the Clerk's Office.

C. Administrative Grievances

If you want to appeal the denial of a benefit provided through an agency of the United States government, you must first use all the administrative remedies set up by the agency. Only after you have exhausted all administrative remedies will the court hear your claim. For example, in the case of a social security complaint, you must have a final decision from the Commissioner of Social Security. Forms for filing social security complaints are available from the Clerk's Office.

You are also required to follow administrative procedures before filing an employment discrimination case (race or color, religion, sex, national origin or age) under Title VII of the Civil Rights Act of 1964. You normally need a Notice of Right to Sue from the Equal Employment Opportunity Commission (EEOC). Carefully follow the instructions and fill out the form available from the Clerk's Office.

V. WHAT THE COURT NEEDS TO SEE IN YOUR COMPLAINT

In addition to exhaustion, there are four important issues that must be addressed when you file a case in federal court: (1) Jurisdiction; (2) Facts; (3) Real injury or wrong; and (4) Relief. You should understand that even if you have addressed all of these issues, there is always a possibility that you will not win.

A. Jurisdiction

Jurisdiction is the authority of a court to hear and decide certain cases. For a court to render a valid judgment, it must have jurisdiction over both the subject matter of the controversy and the person or entities involved. A federal

court is authorized to hear disputes that fall into the following four categories:

- ▶ Questions involving the United States Constitution.
- ▶ Questions of federal law (as opposed to state law).
- ▶ The United States is a party.
- ▶ Disputes between residents of different states (known as diversity of citizenship) where the amount in controversy is more than \$75,000.

B. Facts

You cannot sue someone merely because you have a feeling that person may have violated your rights. You must state facts to support your lawsuit such as the time and place of the incident, who violated your rights, and what they did to violate your rights. The burden of proving the case is on the plaintiff or petitioner (the person who brings the lawsuit). Without factual evidence, the case cannot be won.

When preparing a complaint, you must include facts, – who, what, when (including dates), where and how – that support your claim, against each defendant. For example, you may not list six defendants, but discuss only one or two of them in your complaint. You must include specific allegations of wrongful conduct in your complaint for every person you have named.

C. Real Injury or Wrong

You cannot sue someone just because you are angry at them. You must have been injured (such as physically or economically) in some way. Sometimes emotional injuries can

be compensated, but there must usually be a related physical injury.

D. Relief

You must tell the Court what you want it to do to remedy the wrong you believe you have suffered. There are several types of relief usually requested:

- ▶ You may recover the actual (real) monetary losses you suffered as a result of someone's actions. For example, if someone injures you and you incur medical bills and are unable to work for a period of time, you may be entitled to reimbursement for your medical expenses and lost wages.
- ▶ Punitive damages are monetary damages in addition to the amount of money that will compensate you for your actual loss. Punitive damages are allowed only in extraordinary circumstances, when the Court finds conduct particularly outrageous. Punitive damages are meant to punish wrongful conduct and to prevent future bad conduct.
- ▶ Injunctive relief "enjoins" (stops) someone from doing something or requires someone to do something.
- ▶ Declaratory relief asks the Court to decide what the law is when you are unsure of your legal rights in an actual controversy. The Court may issue a declaratory judgment where it "declares" the law which is binding on the parties to the lawsuit.

VI. HOW TO START A NEW CASE

A. Filing a Complaint

The plaintiff is the party who brings the lawsuit by filing a complaint. The complaint can be filed by

hand-delivering or mailing it to the Clerk's Office. The original signed complaint should be filed together with (1) a completed cover sheet, which you can obtain from the Clerk's Office, (2) an original fully completed summons form for each named defendant, and (3) the \$400.00 filing fee, unless the plaintiff is applying to proceed without prepayment of fees. This Court's Local Rule 10.1 explains in detail the format in which the complaint must be filed.

If the plaintiff cannot afford to prepay the \$400.00 filing fee, the plaintiff may apply to proceed without prepayment of fees. This does not automatically waive other costs such as copying, which will be charged at 50¢ per page, if it is done by the Court.

The requirements for prisoners seeking to waive prepayment of fees are different than for people who are not incarcerated. If you are a prisoner, you should carefully read the instructions attached to the Court's form to make sure you meet all the requirements. The Clerk's Office will accept a complaint without the filing fee if, at the time the case is filed, the plaintiff files the appropriate application. The forms are available upon request from the Clerk's Office. If the application to waive prepayment of fees is denied, you will be required to pay the entire filing fee before the case will proceed. If the filing fee is not paid within a specified period of time, the case could be dismissed. In addition, the Court is required to dismiss the complaint if the Court finds an allegation of poverty to be untrue.

B. Contents of the Complaint

A complaint should contain the following information:

1. **Name of the court:** United States District Court for the District of Alaska.
2. **Plaintiff's name, address, and telephone number.** Place this information at the top left hand corner of the first page of the complaint. It is mandatory that you keep the Clerk's Office and the opposing party informed of your current address and telephone number during the entire lawsuit. This information should be included on the first page of all documents you file.
3. **Full names of ALL defendants.** On the complaint, you may not use "et al." to describe defendants, but must list each defendant by name in your complaint.
4. **Title** of the pleading, for example, "Complaint."
5. The **jurisdiction** or reason the case is being filed in federal court, as explained above.
6. A short and plain **statement of the claim.** You are required to give facts in support of your claim. Write the facts in your own words, as if you were briefly telling someone what happened to you. Describe how each and every defendant, by name, wronged or injured you. Your complaint should not contain legal arguments or citations. Do not attempt to use legalese (legal jargon) unless you have legal training. Otherwise, you risk that you will fail to communicate your complaint to the Court.
7. **A demand for the relief you want.** This can be money or something you want the judge to make someone do or stop doing.
8. **Jury demand** (optional). If a jury trial is sought, the demand for a jury may be placed conspicuously on the first page of the complaint.

9. **Your (the plaintiff's) original signature.** This may not be a photocopy.

NOTE: The Court is required to dismiss a complaint under 28 U.S.C. §§ 1915 and 1915A, if the Court determines that the action is (i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.²

C. Service of the Complaint

Each defendant must be notified of the lawsuit through service of a summons and a copy of the complaint. The plaintiff is responsible for this "service of process." You can get summons forms from the Clerk's Office. After a non-prisoner properly completes the summons form and pays the filing fee, the Clerk's Office will officially issue the summons. This means that an authorized Court employee will sign the form and emboss it with the official seal of the Court.

Detailed provisions on how to serve the defendant are contained in Rule 4 of the Federal Rules of Civil Procedure. You should carefully review this rule. The service of process requirements can be satisfied in one of three ways:

1. Personal Service: The summons and complaint must be served by a person over eighteen years old who is not a party to the case. Private process servers do this for a fee. The name of the person who serves the summons and complaint, the name of

² The Court is required to screen initial prisoner pleadings before service, and non-prisoner complaints where the plaintiff requests that the filing fee be waived; and the Court often issues an order which assists with service, once it is decided that the case is ready to proceed.

the person served, and the date and time of service must be recorded on the summons form. If this section of the summons is not filled out, service is not complete. The original summons form with the completed "return of service" must be returned to the court. Generally, a defendant must file an answer or otherwise respond to the complaint within 21 days of service of process, 30 days in prisoner civil rights cases in which the defendant is a state government agency or employee, and 60 days if the defendant is a federal government agency or employee, unless otherwise ordered by the Court.

2. Waiver of Service: Rule 4 permits a defendant to waive personal service of process. This means that the defendant agrees to respond to the complaint without being officially "served" with it. The waiver of service of process form is available from the Clerk's Office, and must be mailed to the defendant with a copy of the complaint. If the defendant completes and returns the waiver, you will be spared the burden of personal service. However, the time within which the defendant must answer is increased to 60 days. With some exceptions, if the defendant fails to waive service, defendant will be responsible for the costs of service.

3. Service by the U.S. Marshal: If a judge approves an application to waive prepayment of the filing fee, the judge may direct the U.S. Marshal to serve the summons and complaint. The summons will not be issued until the judge enters an order directing service. If you have not yet provided the Clerk's Office with the summons and complaint for service, you will now need to do so.

You must fill out a "Form USM-285" used by the U.S. Marshal to serve the defendant. The form may be obtained from

the Clerk's Office. The Marshal almost always tries to serve the summons and complaint by certified mail. Therefore, a good *current* mailing address for the defendant is needed. If certified mail is unsuccessful, the Marshal will attempt personal service. Therefore, any information that would help serve a defendant personally should be put in the remarks section of the form. This includes place and address of work; physical residence address in addition to any P.O. Box (since no one can be personally served at a post office box); phone numbers for work and/or residence; and any other information that might help locate the defendant for service. You should also be aware that the U.S. Marshal will bill you for the cost of service and attempts to serve, even if your filing fee has been waived.

Service of process must be completed within 120 days after the filing of the complaint. It is the plaintiff's responsibility to see that the complaint is served. If the complaint is not served within 120 days, the case may be dismissed.

D. Cover Sheet

On the cover sheet form, the plaintiff provides the information to the Clerk's Office necessary to properly open the case. It must have plaintiff's original signature, and must be included with the complaint. This form may be obtained from the Clerk's Office.

VII. WHEN A CASE IS AT ISSUE

Once the defendant(s) have been served with a copy of the complaint, the defendant(s) must file an answer or some other response within a specified time. Each defendant is required

to provide a copy of the answer or response to the plaintiff. Once each defendant has filed a response to the complaint, the case is considered at issue. Once your case is at issue, you should reconsider securing counsel to represent you, since at this stage, the proceedings may become even more complex. When a case is at issue, the court may enter an order scheduling pretrial proceedings or may conduct a planning conference.

A. Referral/Consent to a Magistrate Judge

Magistrate judges are appointed by this Court to assist in the management of cases. The district judge to whom the case is assigned may refer the case to a magistrate judge for assistance in managing it. The court does not need the consent of the parties to make this referral.

Magistrate judges may perform a full range of duties, including holding jury and non-jury trials. You are encouraged to consent to trial before a magistrate judge. Cases before magistrate judges can be calendared earlier than before district court judges. The parties will need to complete a Consent to Exercise of Jurisdiction by a United States Magistrate Judge form. Only if all parties agree, however, can a case be tried before a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge assigned the case. If the parties want the case to be tried before a magistrate judge, the form must be completed by all the parties and filed with the Clerk's Office.

B. Motions

If you want the Court to do something related to your case, you must file a motion. DO NOT write a letter or send a motion directly to the judge. Motions should be filed only when necessary. Multiple or frivolous motions can result in sanctions by the Court. You may not file a motion unless you are a party to an action before this Court.

The caption of a motion looks much like a complaint, except that you do not need to list all the defendants. You may list the first named defendant, and "*et al.*" on a motion. You may obtain a motion form from the Clerk's Office. Be specific and concise about what you want so that the Court knows immediately what you are asking for. Also, briefly state any law relevant to your request, if you have that information. Attach any documents that support your motion. Use only relevant portions of lengthy documents, so that the judge reads only what is necessary to make a decision. You must also provide proof that the documents are what you claim they are. The party submitting the documents must declare under penalty of perjury that the documents are true and correct copies, and must say where the party got the documents.

You must serve your motion, and all other documents you file with the Court, except the initial complaint, on the opposing party at or before the time it is filed. You must include a certificate of service stating the date a copy of the document was mailed, postage prepaid, to the opposing party or the party's attorney, and the address to which it was mailed. A certificate of service may be written in the following form at the end of your document:

I hereby certify that a copy of the above name of document was served upon (name of opposing party or counsel) by (mail/fax/hand-delivery) at (address) on (date).

(Your Signature)

Any objection to a motion, called an **opposition**, must be filed within 15 days of service of the motion. Otherwise, the opposing party is considered to have **waived** any objections. The party who filed the motion may file a **reply** to an opposition within 5 days of service of the opposition.³ The reply may only address arguments raised in the opposition, and may not present new arguments. Local Rule 7.1 explains the requirements for filing and responding to motions in this Court.

C. Discovery

Discovery is the name given procedures for obtaining facts and information about the case from the opposing party before trial. The rules regarding discovery are complex, and you should carefully read Rules 26 through 37 of the Federal Rules of Civil Procedure. It is particularly important that you become familiar with the requirements of Rule 26 on the mandatory exchange of information between parties.

Ordinarily the Court does not get involved in the request and/or exchange of discovery. If the parties have a discovery dispute, they should first make a good faith effort to resolve

³ If the pleading is received by any means other than personal service, e.g., mail or facsimile, an additional three (3) days is added to the time to file an opposition or reply. If the last day to file falls on a Saturday, Sunday, or court holiday, the time for filing is extended to the next regular court business day.

the dispute between themselves. If they are unable to reach agreement, a party may then move to **compel** discovery. The motion to compel must include a certified statement, in the first paragraph of the motion, that the party has made a **good faith effort** to obtain the information or material without court action. Very often, discovery disputes are heard by a magistrate judge. Sanctions can be awarded against parties who abuse the discovery process.

D. Dispositive Motions

Dispositive motions are motions that dispose of the case without a complete trial. Two common types of dispositive motions are motions to dismiss and motions for summary judgment.

1. Motion to Dismiss: Federal Rule of Civil Procedure Rule 12(b)

A defendant may move to dismiss a complaint for a variety of reasons. Some common grounds for dismissal are lack of jurisdiction over the subject matter (including failure to exhaust administrative remedies) and failure to state a claim upon which relief may be granted. A motion to dismiss is addressed to defects on the face of the complaint: the plaintiff may actually have a valid claim, but may not have properly stated it in the complaint. Usually when a motion to dismiss is granted, the Court provides an explanation of the defects in the complaint and gives the plaintiff an opportunity to correct them, if they can be corrected.

2. Motion for Summary Judgment: Federal Rule of Civil Procedure 56

A motion for summary judgment is a request for an order of judgment without trial in favor of the party requesting summary judgment. Summary judgment is a method for promptly disposing of claims in which there is **no genuine issue of material fact** or in which only a question of law is involved, which avoids unnecessary trials. A motion for summary judgment presents facts that are not in dispute, and argues that these facts entitle the moving party to judgment as a matter of law. If summary judgment is not opposed, the Court may, but is not required to, grant the motion.

Evidence that supports or opposes a motion for summary judgment includes:

- ▶ **Affidavits** or **declarations** by individuals having personal knowledge of the facts stated. An affidavit or declaration states facts within the knowledge of the person signing the document. It usually begins with a statement such as, "I, Mary Jones, state as follows: 1. 2. 3.," with each fact stated in a separately numbered paragraph. The document must be signed by the person, under penalty of perjury (declaration), and/or it may be signed and sworn to before a notary public (affidavit). Notaries can be found through the yellow pages of the telephone directory, at financial institutions, and at many businesses. The Court cannot notarize a statement for you. A declaration under penalty of perjury must contain the words "I declare under penalty of perjury that the foregoing is true and correct" before the signature. A declaration form, which carries as much weight as an affidavit, may be obtained from the Clerk's Office.

- ▶ **Deposition transcripts.** You may include all or a part of the transcript.
- ▶ **Answers to interrogatories** which may be exchanged during discovery.
- ▶ **Admissions** obtained in the proceedings, including statements in the opposing party's complaint or other documents the opposing party has filed.
- ▶ **Complaint,** which is verified. The complaint must be signed under penalty of perjury by a party with first hand knowledge of the facts.

The party moving for summary judgment must prove two things: (1) that there is no genuine issue of material fact; and (2) that the party is entitled to judgment as a matter of law. On the other hand, if the opposing party shows there is a genuine issue of material fact or that the moving party is not entitled to judgment as a matter of law, summary judgment will not be granted, and the parties may proceed to trial.

VIII. JUDGMENT AND NOTICES OF APPEAL

Final judgment will be entered upon the return of a jury verdict or following a decision by the Court. Appeals from decisions of the judges of the District of Alaska are heard by the United States Court of Appeals for the Ninth Circuit, headquartered in San Francisco, California. A notice of appeal must be filed here in U.S. District Court. The Federal Rules of Appellate Procedure describe the requirements for filing an appeal. The appeal must be filed within the time limits in Federal Rule of Appellate Procedure 4. Your time to file an appeal begins to run when the final order or judgment is entered on the docket. The filing fee for an appeal is

\$505.00. You should carefully read the appellate rules and consider hiring a lawyer if you plan to file an appeal.

FORMS LIST

Cover Sheet

Prisoner's Complaint under the Civil Rights Act, 42 U.S.C. § 1983

Complaint Under the Civil Rights Act, 42 U.S.C. § 1983 (Non-Prisoners)

Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 by a Person in State Custody

Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody

Employment Discrimination Complaint

Social Security Complaint

Prisoner's Application to Waive Prepayment of the Filing Fee
Application to Waive the Filing Fee (Non-Prisoners)

USM-285 form for service of process by the U.S. Marshal

Summons form

Application for Appointment of Counsel and Financial Affidavit
Consent to Exercise of Jurisdiction by a U.S. Magistrate Judge
Voluntary Dismissal (before/after appearance by opposing party)

Motion forms (prisoner and non-prisoner)

Declaration form

Notice of Appeal

GLOSSARY OF TERMS

Appellant: The party who files an appeal.

Appellee: The party against whom an appeal is taken, that is, the party that prevailed in the lower court from which the appeal is taken.

Appellate Jurisdiction: The jurisdiction of one court to review the decisions of other (lower) courts. The United States District Court has limited appellate jurisdiction in some cases over decisions of the bankruptcy court and decisions of Magistrate Judges. Appellate jurisdiction is generally limited to determining questions of law; that is, did the lower court apply the law correctly. Questions of fact are determined by the lower court and are generally taken as true unless unsupported by the evidence.

Court of Appeals: An intermediate appellate court created by Congress. There are thirteen courts of appeal. In general, courts of appeals are geographic; that is, courts of appeal have appellate jurisdiction over district courts located within the geographic jurisdiction of the court. Alaska is part of the Ninth Circuit, headquartered in San Francisco. Appeals from civil and criminal decisions of the district court are taken in the first instance to the Court of Appeals. In most cases, the parties have an appeal of right to the Court of Appeals -- the Court of Appeals must hear the appeal of a final order or judgment of the district court.

Defendant: The party from whom a plaintiff seeks relief in a civil lawsuit, or the accused in a criminal action.

District Court: The United District Court is the general trial court in the Federal judicial system. There is at least

one district court in each state. Alaska is a single-district state.

District Court Judges. United States district court judges are appointed by the President of the United States subject to the advice and consent of the Senate. Once sworn into office district court judges hold office "during good Behavior," that is, for life, and may be removed from office only upon impeachment by the House of Representatives and conviction by the Senate.

De Novo: Literally, anew. The tribunal will review the matter as though it were being decided for the first time, and will substitute its own judgement for that of the lower tribunal.

Equity or Equitable Relief. Any relief other than monetary damages. Equitable relief has its own unique rules (called "maxims") and is designed to provide relief for a wrong or injury when common law relief (money) is either inadequate or unavailable. One of the maxims of equity is: "No injury shall be without a remedy." Equity attempts to do what is fair under all the circumstances and is an area where trial judges have a significant amount of discretion. An example of equitable relief is an injunction prohibiting a person from doing some act.

Evidence: A broadly inclusive term that encompasses anything that tends to prove or disprove a fact in controversy. Examples of evidence include testimony, pictures, and documents. Evidence may be anything that is capable of being sensed by one of the five senses, as long as it logically tends to prove or disprove a disputed issue of fact and is not otherwise inadmissible under the rules of evidence.

Exhibit. Any physical evidence presented to the court other than testimony by a witness. Exhibits include but are not necessarily limited to: documents; records; physical objects; photographs; audio and video recordings; charts; maps; and depositions.

In Personam Jurisdiction. This is jurisdiction over the "person" of the parties. Generally *in personam* jurisdiction is dependent upon the presence of the party within the jurisdictional area of the court; or, if not physically present, that the party have some substantial, meaningful contacts with the state so as not to offend the traditional notions of due process, justice, and fair play. When the court exercises *in personam* jurisdiction, it can command the parties to do an act or pay money and may command others, such as the United States Marshal, to assist it in enforcing its commands if a party refuses to do so voluntarily.

In Rem Jurisdiction: Jurisdiction over the subject of the dispute, *i.e.*, over the "thing," usually an item of property physically within the geographic jurisdiction of the court, either physically or constructively. The defendant in the action is the property, not a person. Examples of *in rem* jurisdiction are libel actions in admiralty against a vessel, quiet title actions to property within the jurisdiction, or over a marital community. When a court exercises *in rem* jurisdiction, it can affect rights, title and/or ownership of the subject ("thing"), even as to parties over whom the court does not have personal (*in personam*) jurisdiction.

Judge: An office held by an individual invested by law with the authority to preside over a legal proceeding. The judge

decides issues of law, and in a jury trial, determines what evidence will be presented to the jury and instructs the jury on the law. In a trial without a jury, the judge also functions as the trier of fact.

Judicial Officer: Synonymous with judge. This term had its origins when magistrate judges were called "magistrates" and bankruptcy judges "bankruptcy referees." The term judicial officer was used as a generic term to include magistrates and bankruptcy referees. It is an obsolete term gradually being phased out of usage.

Justice: Justice is a term that is incapable of universal definition. It has different meanings to different people: what is one person's "justice" may be another's "injustice." One may say that justice is served when the parties have received a full, fair, and open hearing before an unbiased tribunal.

Jurisdiction: The power of a court to make decisions about matters brought before it. Courts are generally classified as being either courts of general jurisdiction or courts of limited jurisdiction. A court of general jurisdiction is a court that is empowered to hear any type of matter unless specifically precluded by law. The Alaska Superior Court is an example of a court having general jurisdiction. A court of limited jurisdiction may hear only specified matters; the United States District Court is a court of limited or specified jurisdiction. In general, the United States District Courts may decide only those matters that directly involve federal law or the United States Constitution, to the extent that Congress has conferred that power. Jurisdiction over state law issues is limited to (1) diversity

jurisdiction, where the plaintiff and defendant are residents of two different states, or (2) the court's pendant jurisdiction, where a matter involving a federal question may include questions of state law as well, such as an action brought under federal civil rights law which may also involve violations of state civil rights laws.

Jurisdiction can also be measured in geographic terms. The jurisdiction of the U.S. District Court for the District of Alaska is geographically limited to the boundaries of the state.⁴

Jury: A panel of individuals drawn from the general public for the purpose of determining disputed issues of fact.

Legal Relief or Relief at Law: Legal relief or relief at law is limited to monetary compensation for a loss. Any other form of relief is equitable in nature.

Magistrate Judge: A judicial office created by act of Congress. Magistrate judges are appointed to a seven-year term by the District Court Judges. In Alaska, magistrate judges are selected by use of a merit selection committee that screens candidates and makes a recommendation to the judges. Magistrate judges perform many judicial functions, particularly pretrial matters in both civil and criminal cases, under the supervision of the District Court Judges, usually by "referral." Magistrate judges also try Class B and C misdemeanors, infractions, and, with the consent of the defendant, Class A misdemeanors. Magistrate judges may also try civil cases with the consent of the parties.

⁴ See also Subject Matter Jurisdiction; *In personam* jurisdiction; *In rem* jurisdiction; Appellate jurisdiction.

Motion: A method of bringing an issue before the court for a decision between the time the case is filed and the trial. Motions cover a variety of matters, ranging from changing the time by which an act is to be performed, to seeking dismissal of the action before trial.

Plaintiff: The party who files a lawsuit, that is, the person who seeks to recover from another monetary damages or some form of equitable relief, such as to make another either do or stop doing an act.

Senior District Court Judges: Judges who have served in office for a specified number of years (the so-called "rule of 80" – when age plus years of service = 80), are allowed to take Senior status. In Senior status, judges have all the powers of a District Judge but have more leeway in accepting or rejecting case assignments. Senior judges might also be called "part-time" or "semi-retired" judges.

Subject Matter Jurisdiction: The power of the court to decide the matter that is brought before it. Examples of subject matter jurisdiction are matters of admiralty or family law (such as divorce or adoption). The United District Court may exercise subject matter jurisdiction over admiralty cases but not matters involving divorce or adoption. While a party may voluntarily submit to *in personam* jurisdiction, the parties may not create subject matter jurisdiction by consent; that is, a divorce case could not be heard in the U.S. District Court even if both parties consented.

Subpoena: A written order (called a writ) that requires a witness to appear and give testimony or produce documents at a specified time and place. Subpoenas are also issued to

command the person to whom it is directed to testify before the grand jury

Subpoena duces tecum (for documents): used to command a person to produce books, papers, documents, or other objects.

Subpoena ad testificandum (for testimony): used to command a person to attend and give testimony at a specified place and time.

Supreme Court of the United States: The highest federal court. Although it has limited original jurisdiction, it generally exercises appellate jurisdiction over all lower federal courts and over state courts concerning issues of federal statutory law or the U.S. Constitution. Appeals from the Court of Appeals are taken to the Supreme Court. The Supreme Court hears a limited number of cases each year, based upon a "rule of four": except in those rare instances where an appeal of right exists, four justices must vote to hear a case.

Trial Courts: Trial courts are where actions begin in the judicial system. A legal action ("lawsuit") is filed in the trial court, which determines the facts and applies the law to those facts to either grant or deny a party relief, in a civil action, or to find a party guilty or not-guilty, in a criminal action.

Trier of Fact: A trier of fact decides what the facts are from the evidence presented. That is, the trier of fact determines, from all the evidence presented, whether it is more likely than not that a particular fact is true. The trier of fact can be a jury or a judge, sitting without a jury. Certain aspects of legal disputes are generally

considered to be exclusively within the power of the trier of fact to decide, such as the credibility of witnesses.

BIBLIOGRAPHY OF LEGAL REFERENCES

PUBLICATIONS

Alaska Statutes *

Alaska Administrative Code **

Alaska Rules of Court **

Federal Rules of Civil Procedure *

Federal Rules of Criminal Procedure *

Local Rules of the United States District Court, Alaska **

Code of Federal Regulations (CFR) *

U.S. Code *

U.S. Reports **

U.S. Statutes at Large *

Anchorage Legal Secretaries Handbook **

Federal Legal Secretary Federal Litigation (handbook) **

Corpus Juris Secundum (CJS) **

American Jurisprudence (AmJur) **

Legal Dictionaries *

Legal Reporter Series such as: Federal Reporter, Federal Supplement, Pacific Reporter **

LIBRARIES

Following is a list of Anchorage area libraries and legal references you may find of help. The individual library should be contacted for any additional information.

* Should be available at all locations

** Available at both court libraries but may not be available at Loussac or UAA

THE U.S. COURTS LIBRARY. Located in Room 181 in the Federal Building U.S. Courthouse at Seventh Avenue and C Street

Open: 10 a.m. to 4 p.m., Monday through Friday.

Copying: No public copier is available, nor may books be checked out. If you request copies from the Clerk's Office, they will be provided to you at 50¢ per page.

Assistance: Other than to provide assistance in finding publications, the library staff may not give advice or help you with your research. You should have basic library skills to use this library.

ALASKA STATE LAW LIBRARY. Located at Third Avenue and K Street. Call 264- 0580 for a recording of hours and other information. Materials do not check out and you will need an Anchorage Bar Association venda-card for copying. Staff may not give advice or help with research.

LOUSSAC PUBLIC LIBRARY. Located at 36th Avenue and Denali Street. Public copiers are available. Call 261-2975 for further information on hours and the collection of legal materials. NOTE: Loussac Library has other titles of a general interest to *pro se* litigants, including: *Legal Action*, *A Layman's Guide*; *Legal Description Cross Reference Book*; and *Legal Drafting in a Nutshell*.

UNIVERSITY OF ALASKA CONSORTIUM LIBRARY. Located on the UAA campus. Call 786- 1825 for open hours and other information on using the Library.

ON-LINE

Many legal publications, statutes, codes, court rules, and judicial decisions may be accessed online. The following are a few places to start:

Library of Congress, Guide to Law Online -

www.loc.gov/law/guide/index.html

U.S. District Court, Alaska - www.akd.uscourts.gov

Alaska Court System - www.state.ak.us/courts

Cornell Law School, Legal Information Institute -
www.law.cornell.edu/

Alaska Legal Resource Center -
www.touchngo.com/lglcntr/index.htm

FindLaw - www.findlaw.com